

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

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FILE: B-213683**DATE:** February 14, 1984**MATTER OF:** McGraw-Edison Company**DIGEST:**

Where protest is filed initially with procuring activity, subsequent protest to GAO, not filed within 10 days of the protester's notice of initial adverse agency action (refusal to consider protest and proceeding with procurement), is untimely even where protester continued to pursue protest with contracting agency after receipt of initial adverse agency action.

McGraw-Edison Company (McGraw-Edison) protests the award of a contract to Siemans-Allis, Incorporated (Siemans-Allis), under invitation for bids (IFB) No. DACW45-83-B0082, issued by the Army Corps of Engineers, Omaha District (Army).

We find that McGraw-Edison's protest is untimely and not for consideration on the merits.

By letter dated September 21, 1983, the Army advised McGraw-Edison that the firm's bid had been rejected as non-responsive because it omitted certain required information and took exception to a provision in the IFB, and that award had been made to Siemans-Allis. McGraw-Edison objected to the award in a letter to the Army dated October 5, 1983. The Army responded by letter of October 27, 1983, that it found no basis to alter its decision and that it did not consider McGraw-Edison's October 5 letter a protest. McGraw-Edison, by letter of November 7, 1983, continued to pursue the matter with the Army and further argued that its October 5 letter should have been construed as a protest. Subsequently, on November 23, 1983, this Office received McGraw-Edison's protest concerning this matter.

If McGraw-Edison's October 5 letter to the Army is considered a protest, that firm's protest here is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(a) (1983), provide that matters protested initially to the procuring activity must be protested to our Office within 10 days of the protester's receipt of actual notice of the agency's

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initial adverse action on the protest. Adverse agency action is defined as any action or inaction which is prejudicial to the position taken in a protest filed with an agency. 4 C.F.R. § 21.0(b) (1983).

Here, McGraw-Edison received notice of initial adverse agency action upon receipt of the Army's October 27 letter advising of that agency's decision to continue with the award to Siemens-Allis. McGraw-Edison acknowledged receipt of the Army's October 27 letter in that firm's letter to the Army of November 7. Therefore, McGraw-Edison's protest received in this Office on November 23, 1983 (more than 10 days after the firm received the Army's October 27 letter), is untimely. Mars Signal Light Company, B-191901, September 27, 1978, 78-2 CPD 238; Sono-Tek Corporation, B-192061, October 20, 1978, 78-2 CPD 290. Moreover, the fact that McGraw-Edison continued to pursue the matter with the Army (by that firm's letter of November 7) after receiving initial adverse agency action does not affect the 10-day requirement for the timeliness of the protest received in our Office. TSI Incorporated - Reconsideration, B-202171, May 6, 1981, 81-1 CPD 357.

Finally, if McGraw-Edison's October 5 letter is not considered a protest, the firm's protest to this Office is untimely. Our Bid Protest Procedures provide that in cases where a protest has not been filed with the contracting agency, a protest must be filed with this Office within 10 days of the protester's learning of the grounds for protest. 4 C.F.R. § 21.2(b)(2) (1983). McGraw-Edison knew of its grounds for protest upon receipt of the Army's September 21, 1983, letter rejecting McGraw-Edison's bid, but did not file a protest with this Office until November 23, 1983, almost 2 months later.

Protest dismissed.

Harry R. Van Cleve
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Acting General Counsel